UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 00-11393-RWZ

KENNETH WALLEY

v.

AGRI-MARK, INC., *et al.*

MEMORANDUM OF DECISION

September 30, 2003

ZOBEL, D.J.

Plaintiff Kenneth Walley alleges that his employer and plan administrator, Agri-Mark, Inc. ("Agri-Mark"), ignored repeated requests for an application for long-term disability benefits for more than a year, by which time he lost his coverage. Plaintiff states that he injured his back in 1996 and became completely unable to work in 1997. Agri-Mark delayed in providing him insurance forms and then directed him to apply for benefits from Continental Casualty Company ("Continental"). Continental, however, denied plaintiff's claim because it only insured Agri-Mark employees who were injured after January 1, 1997. It was not until July 1999 that plaintiff finally applied for benefits from defendant Life Insurance Company of North America ("LINA"), Agri-Mark's previous insurer. Agri-Mark forwarded plaintiff's insurance forms and supporting materials to LINA and included a cover letter explaining that plaintiff's claim had originally been filed through Continental.

LINA's long-term disability policy included a notice provision that required claimants to give

> [w]ritten notice of claim . . . to the Insurance Company within 30 days after the occurrence or start of the loss on which a claim is based. If notice is not given in that time, the claim will not be invalidated or reduced if it is shown that written notice was given as soon as was reasonably possible.

Pursuant to this notice provision, LINA sent a letter to plaintiff on August 20, 1999, requesting

> a written explanation for the late submission of your claim under this policy. . . . With your explanation, we ask that you please also provide us with the dates you worked and the hours you worked on each of these dates from your claimed injury date of June 18, 1996 through November 30, 1997. In addition, we ask that you please complete the enclosed documents (Reimbursement Agreement, Disability Questionnaire and Disclosure Authorization), as well as provide a copy of either your driver's license or birth certificate as proof of your age.

LINA gave plaintiff 30 days to respond. But on September 17, 1999 – just shy of the 30 days – LINA sent plaintiff a letter denying his claim because he had failed to send a "written explanation for [its] late submission." The letter notified plaintiff that he could request a review of the denial within 60 days. Plaintiff did not respond to either notice.

Instead, on June 6, 2000, plaintiff sued LINA, Agri-Mark, and Continental.[1] The two insurers removed the action to this Court. Plaintiff's Amended Complaint, filed on August 29, 2000, alleges that the insurers wrongfully denied him benefits and that Agri-Mark negligently failed to give him an application in a timely fashion and "failed to produce, maintain, or make available long term disability benefits for the plaintiff." Plaintiff seeks "to recover benefits due to him under the terms of his plan, to enforce his

[1] This Court dismissed all causes of action against Continental on September 26, 2002. The motion to enter a judgment of dismissal was assented to by all parties except LINA.

rights under the terms of the plan, [and] to clarify his rights to future benefits under the terms of the plan," pursuant to section 502(a)(1)(B) of the Employee Retirement Income Security Act of 1974 ("ERISA"), codified at 29 U.S.C. § 1132(a)(1)(B).

Last year, LINA sought summary judgment on the ground that denial of benefits was proper because plaintiff did not respond to LINA's queries. On August 1, 2002, this Court denied LINA's motion because LINA had never determined whether plaintiff filed his claim "as soon as reasonably possible," the standard mandated by the insurance policy:

> Although plaintiff never personally provided LINA with an explanation for his delay in filing, Agri-Mark did so on his behalf on July 8, 1999, when it sent LINA a letter explaining that plaintiff's claim had originally be[en] sent to Continental. Thus, LINA had adequate information with which to decide whether plaintiff's delay was reasonable.

On November 19, 2002, this case was stayed pending an administrative determination by LINA "whether, based solely on the Record for Judicial Review ("RJR") presented to the Court in this matter, Plaintiff's claim was given to LINA as soon as reasonably possible pursuant to the Policy . . . ." On December 17, 2002, LINA again denied plaintiff's claim, noting that Agri-Mark's July 8, 1999, letter did not provide enough evidence to show that the claim was filed "as soon as reasonably possible."

Plaintiff and LINA have now filed cross-motions for summary judgment. In addition, Agri-Mark has filed a motion to dismiss for lack of subject matter jurisdiction and failure to state a claim for which relief can be granted. Fed. R. Civ. P. 12(b)(1) & (6).

Plaintiff and LINA agree that the insurer's denial of benefits should be reviewed under the arbitrary and capricious standard. "The arbitrary and capricious standard

asks only whether a fact-finder's decision is plausible in light of the record as a whole, or, put another way, whether the decision is supported by substantial evidence in the record." Leahy v. Raytheon Co., 315 F.3d 11, 17 (1st Cir. 2002) (citations omitted). Plaintiff argues that LINA's decision was arbitrary and capricious because (1) the insurer directly corresponded with and requested information from him instead of with Agri-Mark, contrary to a policy provision that it "will deal solely with the Policyholder"; (2) LINA failed to provide plaintiff with adequate notice of the reasons for denial and did not give him the full 30 days to respond to its August 20, 1999, inquiry before denying his claim; (3) the record shows that plaintiff filed a disability plan report with Agri-Mark in December 1997, 15 days after he became eligible for benefits, thereby establishing timely notice of claim; (4) LINA should have decided the merits of plaintiff's claim.

Regarding plaintiff's first argument, other provisions of the LINA policy plainly allow LINA to correspond directly with plaintiff, and it was perfectly reasonable for LINA to do so. In fact, it is even mandated by ERISA, 29 U.S.C. § 1133(1) ("[E]very employee benefit plan shall – (1) provide adequate notice in writing to any participant or beneficiary whose claim for benefits under the plan has been denied, setting forth the specific reasons for such denial, written in a manner calculated to be understood by the participant."). Second, LINA's August 20 and September 17 letters gave plaintiff a specific account of the problems with his application, the reasons for the denial, and the manner in which he could perfect his claim. Even though LINA did not give plaintiff the full 30 days to respond to its August 20 inquiry, the September 17 denial of benefits gave plaintiff 60 days to appeal and supplement the record. Plaintiff could have taken action to convince LINA that the claim was filed as soon as reasonably possible, but he

did nothing. Third, plaintiff's argument that the December 1997 notice he filed with Agri-Mark is equivalent to notice to LINA is premised upon the idea that the plan administrator is the insurer's agent. This is simply not the law. UNUM Life Ins. Co. of America v. Ward, 526 U.S. 358, 378-79 (1999). Finally, once LINA properly determined that the plaintiff's claim was not filed as soon as was reasonably possible, it was under no obligation to investigate the merits of the claim.

In fact, it was not arbitrary and capricious for LINA to deny plaintiff's claim because there was not enough evidence to show that the filing delay was reasonable. Nothing in the record before LINA showed that a July 1999 application regarding an injury that occurred in 1996 was filed as soon as reasonably possible. Agri-Mark's July 8, 1999, cover letter does not explain the years-long delay. It merely noted that the application had been previously filed with and rejected by Continental.

With respect to Agri-Mark's motion to dismiss, the allowance of LINA's summary judgment motion is dispositive. LINA would have conducted a full examination of the merits of plaintiff's claim had plaintiff submitted an explanation for the filing delay. Plaintiff's own inaction caused the denial of benefits, so he therefore cannot allege that Agri-Mark "failed to . . . make available long term disability benefits for the plaintiff." (Amended Complaint, ¶ 19.) As a result, plaintiff cannot state a claim against Agri-Mark for which relief can be granted.[2]

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[2] Plaintiff argues in the alternative that Agri-Mark is liable under 29 U.S.C. §§ 1132(a)(1)(A) & (c) and 1132(a)(3), bases for liability that are not alleged in the Amended Complaint. Even if this Court were to read them into the Amended Complaint, the claims would be dismissed. First, a failure to provide claims forms is not covered under subsections (a)(1)(A) and (c), which allow damages against administrators who fail to comply with a request for information that he or she is legally

Accordingly, LINA's Motion for Summary Judgment and Agri-Mark's Motion to Dismiss are allowed. Plaintiff's Motion for Summary Judgment is denied. Judgment shall be entered for defendants.

_____ DATE

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RYA W. ZOBEL
UNITED STATES DISTRICT JUDGE

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required to furnish to a participant or beneficiary. See Arsenault v. Bell, 724 F. Supp. 1064, 1066 (D. Mass. 1989); see also Hamilton v. Allen-Bradley Co., Inc., 244 F.3d 819, 827 (11th Cir. 2001); Allinder v. Inter-City Products Corp., 152 F.3d 544, 549-50 (6th Cir. 1998); Leung v. Skidmore, Owings & Merrill LLP, 213 F. Supp. 2d 1097, 1105 (N.D. Cal. 2002). Second, money damages are not authorized by subsection (a)(3), which authorizes "appropriate equitable relief" for a breach of a fiduciary duty. Great-West Life & Annuity Ins. Co. v. Knudson, 534 U.S. 204, 210-11 (2002). Plaintiff's alternative bases for suing Agri-Mark are unavailing.

Plaintiff also urges denial of Agri-Mark's motion on the ground that it did not include with its filing a certification under Local Rule 7.1(A)(2) that counsel conferred and attempted in good faith to resolve or narrow the issue. "[O]mitting to confer prior to filing a motion certain to be opposed does not warrant so severe a sanction as summary denial." Gerakaris v. Champagne, 913 F. Supp. 646, 651 (D. Mass. 1996).